

APPEAL NO. 040934
FILED MAY 25, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 24, 2004. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury on _____; (2) the claimant did not notify the employer of an injury within 30 days, and good cause did not exist for his failure to timely report an injury; (3) the claimant did not have disability; and (4) the respondent (carrier) timely filed its contest of compensability, and therefore did not waive its right to do so.

DECISION

Affirmed.

The claimant contends that the carrier waived the right to contest the alleged injury of _____, because the carrier did not dispute the claimed injury within seven days. There was conflicting evidence as to whether the carrier had first received written notice on September 3, 2002, as alleged by the claimant, or on September 10, 2002, as argued by the carrier. Section 409.021(a) requires that a carrier act to initiate benefits or to dispute compensability within seven days of first receiving written notice of an injury or waive its right to dispute compensability. Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003. The hearing officer reviewed the conflicting evidence and determined that the carrier, through its third party administrator, first received written notice of the claimant's claimed injury on September 10, 2002. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer was acting within his province as the fact finder in resolving the evidence in favor of the carrier and nothing in our review of the record demonstrates that the hearing officer's determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10), that he gave timely notice of his injury to his employer as required by Section 409.001, and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented on the issues of compensable injury, timely notice, and disability. We conclude that the hearing officer's determinations that the claimant did not sustain a compensable injury, that he did not give timely notice to his employer of his injury, and that he did not have disability are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **FAIRFIELD INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DENISE BLOCKBOURN
12225 GREENVILLE AVENUE
DALLAS, TEXAS 75243.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

Robert W. Potts
Appeals Judge